

State of California



Fair Political Practices Commission

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322-6441

July 27, 1984

Malcolm B. Hunter
City Attorney
City of Richmond
330 City Hall
Richmond, CA 94804

Re: Our Telephone Conversation
File No. A-84-193

Dear Mr. Hunter:

This letter is sent to confirm our telephone conversation of July 23, 1984, in which you requested advice and information concerning the conflict of interest provisions of the Political Reform Act. You stated that there was a decision pending before the Richmond City Council concerning the utility user tax and, in particular, its application to a very large corporation. The corporation would be subject to a different tax rate than others because of a "cap" provision which would affect only the corporation. One of the councilmembers has an investment of more than \$1,000 in this corporation. The possible financial effect of the Council decision on the corporation was \$1 million to \$2 million. I advised you that, based on these facts, the councilmember had a conflict of interest within the meaning of Government Code Sections 87100 and 87103 and Commission regulations, 2 Cal. Adm. Code Sections 18700 and 18702. He should abstain from all participation in this matter.

We also generally discussed the potential for conflicts of interest in city taxing decisions. I explained to you that the unique circumstances of each situation must be analyzed. In some cases, the "public generally" exception contained in Government Code Section 87103 may apply,^{1/} but, in most taxing

^{1/} Section 87103 provides that where the foreseeable, material financial effect of a governmental decision on an official's financial interest is indistinguishable from the effect of the decision on the public generally, the official is not prohibited from participating in the decision. We often call this the public generally exception to disqualification.

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decisions, there are questions of rate structure where the public generally exception clearly would not apply.

For your further information, I have enclosed a copy of a staff advice letter and a copy of the stipulation in the recent Commission proceeding against Mayor Thomas J. Corcoran which discusses the utility user tax imposed last fall (see specifically pp. 16-18). If I can be of further assistance, please feel free to contact me at (916) 322-5901.

Sincerely,



Diane Maura Fishburn
Counsel
Legal Division

Ref

DMF:plh
Enclosures